



EQUITY



- Set of legal principles
- Justice and fairness
- Supplementments strict rules of common law
- Allows to courts to use their own discretion



- Guided by 12 basic and 5 additional general ethical statements – maxims
- Equity will not suffer a wrong to be without remedy
- Equity follows the law
- He who comes to equity must come with clean hands
- Equitable remedies are discretionary.



HISTORY OF EQUITY

- Dissatisfaction with the decisions of the courts of law
- Possibility to appeal directly to the king
- Resolving the petitions by Chancellors



HISTORY OF EQUITY

- Early Chancellors – Catholic clerics, knowledge of Roman civil and canon law
- Court of Chancery (15. century)
- Differences between decisions of individual Chancellors – criticism of equity



HISTORY OF EQUITY

- Sir Thomas More – first lawyer who was appointed as Chancellor (1529)
- All future Chancellors were lawyers
- Developing of equitable doctrines



HISTORY OF EQUITY

- Criticism of equity – John Selden :

„Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. This is all one as if they should make the standard for the measure we call a foot, a Chancellor’s foot; what an uncertain measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: this is the same thing in a Chancellor’s conscience.“



HISTORY OF EQUITY

- Conflicts with common law – equity prevail
- Imprisonment – the penalty for enforcing common law and disobeying equitable injunction



HISTORY OF EQUITY

- The end of 19. century – fusion of common law and law of equity into one court system
- Equity still prevails



SUMMARY

- legal principles based on ethical statements
- Developed as the Court of Chancery (15.century)
- Criticised for differences between decisions of Chancellors
- Sir Thomas More – first Chacellor who were also lawyer – all future Chancellor lawyers
- Developing of equitable doctrines
- Equity x Common law – Equity should prevail
- United into one court system with Common law (19.century)



SOURCES

- Marta Chromá: New Introduction to legal English, Volume I., Karolinum, 2004
- www.wikipedia.org

